

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

NATIONAL ASSOCIATION OF PRIVATE FUND
MANAGERS; ALTERNATIVE INVESTMENT
MANAGEMENT ASSOCIATION, LIMITED; and
MANAGED FUNDS ASSOCIATION,

Plaintiffs,

v.

SECURITIES AND EXCHANGE COMMISSION,

Defendant.

Case No. 4:24-cv-00250-O

AGREED MOTION TO SET BRIEFING FORMAT AND SCHEDULE

This is a lawsuit under the Administrative Procedure Act challenging a final rule—the “Dealer Rule”—recently promulgated by the Securities and Exchange Commission. Plaintiffs—a coalition representing private-fund managers affected by the Rule—together with the Commission, respectfully request that the Court enter the below briefing format and schedule, mutually agreed upon, to allow for expedited consideration of this case in light of the upcoming deadline for compliance: the Rule takes effect on April 29, 2024, with compliance required one year thereafter. *See* Adopting Release, 89 Fed. Reg. 14,938 (Feb. 29, 2024).

The Dealer Rule adopts a “further definition” of the phrase “as a part of a regular business” as used in the definitions of the statutory terms “dealer” and “government securities dealer.” The Commission set a compliance deadline of one year from the effective date of the Rule, which is April 29, 2024 (60 days after Federal Register publication), making full compliance mandatory by

late April 2025. *See* 89 Fed. Reg. 14,938, 14,938/1, 14,964–65. If the Rule is not set aside, Plaintiffs’ members believe they will need to make major, unrecoverable investments in compliance efforts beginning no later than December 2024, in order to meet the compliance deadline. *See* ECF 1, at 21–22.

Plaintiffs have met and conferred with the Commission and arrived at a mutually agreed-upon format and schedule. Plaintiffs submit that this schedule will promote resolution of this case by early December 2024. In the interest of judicial efficiency, the parties plan to proceed based on cross-motions for summary judgment, with consolidated briefing to minimize the burden on the Court, on an expedited timetable. *See, e.g., Nat’l Ass’n of Private Fund Managers v. SEC*, No. 23-60471, Dkt. 34-2 (5th Cir. Sept. 27, 2023) (granting motion for expedition of challenge to SEC rule). And because the case turns solely on the administrative record, the parties propose to waive the Commission’s answer, discovery, and the requirement to file statements of undisputed material fact.

Specifically, the parties jointly and respectfully propose, for the Court’s consideration, the following briefing format and schedule:

- April 16, 2024: Defendant’s Certified List describing administrative record
- April 30, 2024: Plaintiffs’ Motion for Summary Judgment
- June 11, 2024: Defendant’s Combined Opposition / Cross-Motion for Summary Judgment
- July 18, 2024: Plaintiffs’ Combined Reply / Opposition
- August 22, 2024: Defendant’s Reply

Plaintiffs respectfully request that the Court rule on the parties’ cross-motions for summary judgment by December 2, 2024.

CONCLUSION

The parties jointly and respectfully request that the Court enter the briefing format and schedule proposed above, including the waiver of the Commission's answer and the requirement to file statements of undisputed material fact.

Dated: March 27, 2024

Respectfully submitted,

/s/ Keefe M. Bernstein

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CERTIFICATE OF CONFERENCE

We hereby certify that counsel for the parties conferred and agreed to submit the motion jointly.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing using the CM/ECF system on March 27, 2024, which will send an electronic notification of such filing to all counsel of record.

Respectfully submitted,

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